

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

To be argued by
ROBERT KOPPELMAN

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

77-1328

UNITED STATES OF AMERICA,

Appellee,

-against-

MICHAEL D. KNABLE,

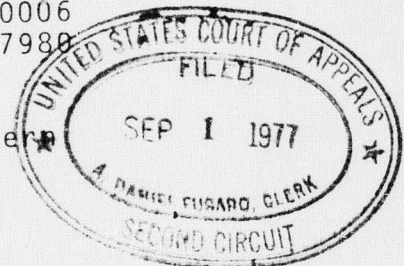
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF AND APPENDIX FOR THE APPELLANT

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FOR THE SECOND CIRCUIT _____x

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This is an appeal from a judgement, dated July 18, 1977, convicting defendant, on his plea of guilty in the United States District Court for the Southern District of New York (The Honorable Milton Pollack), under indictment number 77 Cr. 213, of violations of 26 U.S.C. 7206 (2), making false statements in connection with income tax matters (three counts) and 18 U.S.C. 1001, making false statements to the Internal Revenue Department

(one count).

Appellant was sentenced to a two year term on each count, said sentences to run concurrently. He is now incarcerated pursuant to the sentence.

ISSUE PRESENTED

Whether the sentence should be vacated and the case remanded for resentencing on the grounds that the Court below relied on material false assumptions in imposing sentence.

STATEMENT OF FACTS

Michael Knable was charged, in a sixteen count indictment, with making false statements in connection with income tax matters (three counts) and making false statements to the Internal Revenue Department (thirteen counts). He pleaded guilty to four of those counts.

All the charges relate to the fact that at various times from 1973 through 1976 Mr. Knable submitted powers of attorney to the Internal Revenue Service in which he represented himself to be an attorney and certified public accountant when in fact he was neither. These powers of attorney were submitted by Knable in connection with his appearances before Internal Revenue auditors on behalf of clients for whom he had performed

the function of tax return preparer.

Defendant was not charged in the indictment, nor was it ever claimed that these misrepresentations were a part of a scheme to defraud either the Government or any private citizen with a larcenous purpose. Indeed, it seems clear that Michael Knable's conduct resulted from his history of severe emotional and mental problems, relating to his self-image and self-esteem and feelings of inadequacy which manifested themselves in his penchant for representing himself to be something he was not, be it attorney, certified public accountant, police officer or assistant district attorney (A11-16, A23-24).*

As the Judge was informed at the time of sentence, in 1972 defendant was examined by a psychologist who found, referring to Knable, that:

...it quickly becomes apparent that we are dealing with a pathetic, even hopeless child and not a mature, adequate man. His show of sophistication and worldliness is a sham, a shallow cover for what seems to be a regressed development and an asexual orientation. He pushes in expansive fashion, seeks to intellectualize all life situations but cannot escape revealing himself as psychologically empty and as plagued by feelings of vulnerability.

* * *

*References are to Defendant-Appellant's Appendix.

While he tried to make it appear that he is a man who takes initiative and is quite aggressive, it is far more valid to assess him as passive, submissive and chronically fearful. This is not the hale fellow well met, the bon vivant, he strives to portray. Instead, he is seen in test responses as plagued by feelings of inner desolation and dread loneliness.

* * *

He impresses as suffering an atypical schizophrenic reaction in which undifferentiated and pseudopsychopathic trends prevail. His difficulties clearly transcend those seen in individuals suffering personality trait disorders. This is a man whose condition will surely worsen if he is not involved in a protracted therapy program (A13-15).

In connection with his present difficulties, defendant was re-examined by the same psychologist who adhered in all essential respects to the original report (A14-15).

As a result of defendant's notice to the Government that he intended to rely on the defense of insanity, Knable was examined by a psychiatrist of the Government's choosing. Although he was found competent to stand trial and not insane, the psychiatrist's findings were not at all dissimilar to those of the 1972 examination, i.e.;

He suffers from an impaired self-esteem and a damaged self-image with a disturbance in his sense of self in relation to others. His personality features are consistent with a paranoid character trait disorder without the presence of an organized

paranoid delusional system (A8, A15).

As to Knable's motivation in committing the acts which form the basis of the charges against him, the government's own psychiatrist found that;

His behavior constituting the offense with which he has been charged represented a pathological (maladaptive) psychological defense against unacceptable feelings of inadequacy and deficiency and an acting-out of unresolved internal emotional problems relating to his self-image and self-worth (A15; A8).

Despite these uncontested psychiatric findings, defendant was sentenced to four concurrent two year terms of imprisonment. Not once referring to Knable's mental and emotional problems, the sentencing Judge imposed this harsh sentence on the basis of erroneous assumptions.

Neither the indictment nor the Government made any claim that defendant's representing himself to be an attorney and certified public accountant was a part of a larger scheme to defraud either the government or private citizens for larcenous purposes. Indeed, even when specifically called upon to comment at sentence, the assistant United States attorney did not attribute such a dishonest motivation to defendant (A19).*

*The only comment made by the assistant United States attorney was a reference to the Government's pre-sentence

Nevertheless, without any basis in fact, the Judge made this very assumption, referring to the "enormity of [defendant's] transgressions (A25)" and comparing him, unfavorably, to an armed hold-up man (A25-26).

Despite the fact that the probation report indicated that defendant had done good work for his clients for which he had charged reasonable fees (A12, A26), the Court asserted that the source of Knable's indebtedness on suits and judgements - which had been listed in the probation report - was "charges against [defendant] for fraud by [his] clients." (A18)

Mr. Knable, responding, explained that he had never been sued by a client or the Government and that his indebtedness was the result mainly of a foreclosure on his home and the remainder of his debts stemmed similarly from his inability, due to the failure of his business, to make payments on Master Charge and American Express accounts (A19).

After hearing this explanation, again with no factual or evidentiary basis, the Judge attributed to defendant a further, different larcenously fraudulent purpose, accusing Knable of "... making purchases without intention to pay for them...." (A19).

memorandum which alleged the commission of a similar misrepresentation by Knable, after the taking of the plea. Defendant denied having misrepresented and the sentencing Court made no further allusion thereto (A20-22).

All in all, the sentencing Judge, without any foundation in fact, evidence or even allegation, erroneously viewed defendant's conduct as part of a larger larcenous scheme and sentenced him accordingly. In truth, as the Government's own psychiatrists report indicated, Knable's conduct, to the contrary, was not that of a thief but was merely the self-puffing psychological defense against unacceptable feelings of inadequacy of a severely emotionally disturbed man.

POINT ONE

THE DISTRICT COURT, IN SENTENCING THIS SEVERELY EMOTIONALLY DISTURBED MAN TO TWO YEARS IMPRISONMENT, ACTED ON THE BASIS OF MATERIAL FALSE ASSUMPTIONS AS TO FACTS RELEVANT TO SENTENCE.

It was defense counsel's contention at the sentence hearing that defendant's misrepresentations were not larcenously fraudulently motivated but were the result of long standing serious emotional illness. This position was buttressed by reference to psychological and psychiatric findings and reports. Even the Government's own psychiatrist specifically found that Knable's misrepresentations were:

... a pathological (maladaptive) psychological defense against unacceptable feelings of inadequacy and deficiency and an acting-out of unresolved internal

emotional problems relating to his self-image and self-worth.

Moreover, neither the Grand Jury, through its indictment, nor the Government's representative, who was called upon by the Judge to comment, made any claim that Knable's actions were for the purpose of stealing from or defrauding either private citizens or the Government. Indeed, the probation report indicated that defendant had done good work for his clients and had charged them reasonable fees.

Nevertheless, the District Court, with no foundation in fact or evidence, erroneously attributed just such a larcenous intent to Knable. For example, the Court asserted first, without any basis for so doing, that defendant's tax clients had secured judgements against him for fraud. Later, the Judge similarly presumed, again baselessly, that Knable had fraudulently made purchases without any intention to pay for them.

That it is more than a mere possibility that the Court, in imposing sentence, relied on its mis-assumptions and misunderstanding in ascribing a larcenously venal purpose to defendant's actions is quite clear. For, even after defendant and his counsel attempted to set the record straight, the Court persisted in its view, referring to the "enormity" of Knable's "transgressions", and comparing his

conduct to that of an armed robber.

Clearly, the motivation for the performance of a criminal act is a factor relevant to and should be taken into consideration in assessing the sentence to be meted out. And, as here, a material misunderstanding or a material false assumption in regard thereto should render the sentencing procedure invalid [see, e.g., *Townsend v. Burke*, 334 U.S. 736 (1948); *United States v. Malcolm*, 432 F.2d 809, 816 (2d Cir. 1970); *United States v. Robin*, 545 F.2d 775 (2d Cir. 1976); *United States v. Stein*, 544 F.2d 96 (2d Cir. 1976)].

As this Court has stated:

Fair administration of justice demands that the sentencing judge will not act on surmise, misinformation and suspicion but will impose sentence with insight and understanding. *United States v. Malcolm*, supra at 819].

And, where, as occurred here, the possibility of reliance on mis-assumption or misinformation is brought to the sentencing Court's attention, the failure of that Judge "to take appropriate steps to ensure the fairness and accuracy of the sentencing process must be held to be plain error...." [*United States v. Robin*, supra at 779].

The District Court's erroneous and baseless assumptions concerning defendant's motivation caused the jurist to view Knable's acts as those of a thief, akin to those of an armed predator and to sentence him accordingly. Had this mis-assumption not clouded the issue, a sentence

with the insight and understanding due to a pathetic and emotionally disturbed individual, as described in the psychiatric reports, would likely have been imposed.

Accordingly, the sentence should be vacated and the case remanded for re-sentence before a different judge [see, e.g., *United States v. Robin*, supra; *United States v. Stein*, supra].

CONCLUSION

FOR THE ABOVE STATED REASONS, THE SENTENCE SHOULD BE VACATED AND THE CASE REMANDED FOR RESENTENCE BEFORE A JUDGE OTHER THAN THE ONE BEFORE WHOM HE WAS ORIGINALLY SENTENCED.

Respectfully submitted,

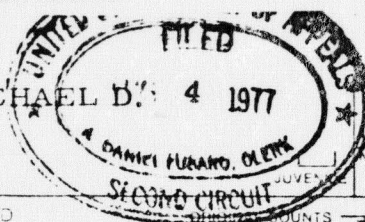
ROBERT KOPPELMAN
Attorney for Defendant-
Appealant
115 Broadway
New York, N.Y. 10006
212-349-7980

APPENDIX TO BRIEF

Docket Entries

CRIMINAL DOCKET - U.S. District Court

KNABLE, MICHAEL D. 4 1977



77 0213 01

US TITLE SECTION 26:7206(2) 18:1001
OFFENSES CHARGED False statements in connection with income tax matter 1-3
False statements to Internal Revenue Service 4-16

7/19

BAIL • RELEASE
☐ Denied ☐ Set ☐ AMT ☐ Fugitive ☐ Pers. Recog. ☐ PSA ☐ 10% Deposit ☐ Surety Bond ☐ Collateral ☐ 3rd Party Cust ☐ Other
 Date ☐ Bail Not Made ☐ Status Changed (See Docket)

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody Began	High Risk Date	Information	Trial Set For	Disposition of Charges
Summons Served	Indict. Waived	1st Plea	Voir Dire	☐ Convicted ☐ On All Charges ☐ On Lesser Offense(s) ☐ Acquitted ☐ WOP: ☐ WP ☐ On Government Motion
First Appearance	In Charging District	4-7-77	Final Plea	

MAGISTRATE

SEARCH WARRANT	DATE	INITIALS	OUTCOME
SEARCHED			☐ DISMISSED
INDEXED			☐ HELD FOR OR OTHER PROCEEDING IN DISTRICT
SERIALIZED			☐ HELD FOR OR OTHER PROCEEDING IN DISTRICT
FILED			

Patricia A. Williams
791-1928

John P. Curley, Federal Defender Services Unit

3-28-77 Filed Indictment.....Metzner, J.
 4-7-77 Deft. (atty. John P. Curley present) pleads not guilty. Ordered F/P. Bail \$15,000 PRB co-signed by wife, continued. Case assigned to Pollack, J. for all purposes.....Lasker, J.
 4-7-77 Deft. (atty. John P. Curley present). Hearing held and concluded. Trial set for 5-10-77.....Pollack, J.
 04-07-77 Filed Appearance Bond in the sum of \$15,000. & co-signed by deft's. wife.
 04-25-77 Filed deft's notice re: intent to rely on insanity as defense & intent to introduce testimony as to mental disease etc.
 04-28-77 Filed Order that deft to be exam. by Dr Gurston D Goldin a psychiatrist to determin sanity, fees to be paid by the U.S. Atty. Pollack J.
 04-28-77 Filed govt's affdvt re: that deft be exam. pursuant to 18:4244 .

A1

2 5-5 E 1

Docket Entries

DATE	DOCUMENT NO.	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY			
				Interval Section (a)	Start Date End Date (b)	LT Code (c)	Total Days (d)
7-12-77		Filed Letter of Dr Gurston D Goldin re: psychiatric exam.					
7-12-77		Filed defts acknowledgment of constitutional rights.					
7-12-77		Deft (atty Robert Koppelman) now pleadd guilty to cts. 1,2,3 & 6 only. Cts 4,5,& 7 to 16 inclusive are carried to date of sentence. P.S.I. ordered for sent, 7/18/77 . Bail cont'd deft. to surrender His passport to day Bail limits to include the Eastern Seaboard. Pollack J.					
7-08-77		Filed Govt.'s sentencing memorandum.					
7-18-77		Filed JUDGMENT (atty. Robert Kippelman) cts.1,2,3,6: 2 yrs. impr. ea. ct. conc. Cts. 4,5, and 7-16 incl. are dismissed on motion of deft.'s counsel with the consent of the Govt. Pollack,J. issued all copies.					
7-19-77		Filed notice of appeal from judgment of 7-18-77. Mailed copies.					

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

A2

Indictment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA, :

- v - :

MICHAEL D. KNABLE, :

Defendant. :

-----x

INDICTMENT

77 Cr.

COUNT ONE

The Grand Jury charges;

On or about the 17th day of May, 1973, in the Southern District of New York, MICHAEL D. KNABLE, the defendant, unlawfully, wilfully and knowingly did aid and assist in, and procure counsel and advise the preparation and presentation under and in connection with a matter arising under the internal revenue laws of a document to wit, a power of attorney in connection with the individual tax audit changes for Gary and Lenore Schrager, which such power of attorney was fraudulent and false as to certain material matters, to wit, that the defendant MICHAEL D. KNABLE was an attorney and Certified Public Accountant in the states and jurisdictions of New York, Virginia, and the District Columbia whereas, in truth and in fact, as the defendant then and there well knew, he was not then and has never been admitted to practice law before the bar of the said states or of the District of Columbia, and was not then and has never been licensed as a certified public accountant in the said states or in the District of Columbia.

(Title 26, United States Code, Section 7206(2))

Indictment

COUNT TWO

The Grand Jury further charges:

On or about the 18th day of July 1973, in the Southern District of New York, MICHAEL D. KNABLE, the defendant, unlawfully, wilfully and knowingly did aid and assist in, and procure counsel and advise the preparation and presentation underand in connection with a matter arising under the internal revenue laws of a document, to wit, a power of attorney in connection with the individual tax audit changes for Carol Palmer, which such power of attorney, was fraudulent and false as to certain material matters, to wit, that the defendant MICHAEL D. KNABLE was an attorney and Certified Public Accountant in the states and jurisdictions of New York, Virginia, the District of Columbia, Pennsylvania and California, whereas, in truth and in fact, as the defendant then and there well knew, he was not then and has never been admitted to practice law before the bar of the said states or of the District of Columbia, and was not then and has never been licensed as a certified public accountant in the said states or in the District of Columbia.

(Title 26, United States Code, Section 7206(2)).

COUNT THREE

The Grand Jury further charges:

On or about the 1st day of August 1975, in the Southern District of New York, MICHAEL D. KNABLE, the defendant, unlawfully, wilfully and knowingly did aid and assist in, and procure counsel and advise the preparation and presentation under, and in connection with a matter arising under the Internal Revenue laws, of a document, to wit, a power of attorney in connection with the Request for Reconsideration of Findings in the 90 day period for Anne-Cerd Andreson, which such power of attorney was fraudulent and false as to certain material matters, to wit, that the defendant MICHAEL D. KNABLE was an attorney and Certified Public Accountant in the states and jurisdictions of New York, Virginia, Florida, California and the District of Columbia, whereas, in truth and in fact, as the defendant then and there well knew, he was not then and has never been admitted to practice law before the bar of the said states or of the District of Columbia, and was not then and has never been licensed as a certified public accountant in the said states or in the District of Columbia.

COUNTS FOUR THROUGH SIXTEEN

The Grand Jury further charges:

On or about the dates hereinafter set forth in Counts Four through Sixteen, in the Southern District of New York, MICHAEL D. KNABLE, the defendant, unlawfully, wilfully and knowingly did make and cause to be made in a matter within the jurisdiction of a department of the United States of America, to wit, the Internal Revenue Service, false, fictitious and fraudulent statements and representations in powers of attorney submitted on behalf of the individual taxpayers hereinafter identified to the effect that the defendant was

Indictment

an attorney and a Certified Public Accountant in the states and jurisdictions hereinafter set forth, whereas in truth and in fact, as the defendant then and there well knew, the defendant was not then and has never been admitted to practice law before the bars of the said states and jurisdictions, and was not then and has never been licensed as a Certified Public Accountant in any of the said states and jurisdictions as hereinafter set forth:

<u>COUNT</u>	<u>NAME OF TAXPAYER GRANTING POWER</u>	<u>DATE FALSE STATE- MENT MADE</u>	<u>JURISDICTION LISTED</u>
4	Gary and Lenore 'chrager	5/17/73	New York, Virginia, District of Columbia
5	Carol S. Palmer	7/18/73	New York, Virginia, District of Columbia, Pennsylvania California
6	Birgitta Pettersson	8/23/73	New York, Virginia, District of Columbia, Pennsylvania California
7	William Brustein	1/15/75	New York, Virginia, District of Columbia, Massachusetts California
8	Betty Moses	7/17/75	New York, District of Columbia, Virginia, Florida, California
9	Anne-Cerd Andresen	8/1/75	New York, Virginia, Florida, California, District of Columbia

<u>COUNT</u>	Indictment <u>NAME OF TAXPAYER GRANTING POWER</u>	<u>DATE FALSE STATE- MENT MADE</u>	<u>JURISDICTIONS LISTED</u>
10	Gary and Lenore Schrager	9/1/75	New York, Virginia, District of Columbia, California, Florida
11	Liv K. Andersen	9/10/75	New York, Virginia, District of Columbia, California, Florida
12	Carol Rollinger	12/5/75	New York, Washington, District of Columbia, Virginia, California
13	Kathleen Christensen	12/10/75	New York, California, Virginia, Washington, District of Columbia
14	Lena Mattsson	3/19/76	New York, District of Columbia, Virginia, California, Florida
15	William Brustein	6/8/76	New York, Virginia, District of Columbia, California, Florida
16	Margareta U. Nordgren	8/30/76	New York, Virginia, District of Columbia, California, Florida

(Title 18, United States Code, Section 1001.)

FOREMAN

A7

ROBERT B. FISKE, JR.
United States Attorney

Psychiatric Report

GURSTON D. GOLDIN, M. D.

166 EAST 63RD STREET

NEW YORK, N. Y. 10021

TEMPLETON 8-7223

May 4, 1977



Hon. Milton Pollack
United States Judge
Southern District of New York
Foley Square
New York, N.Y. 10007

77 Cr. 213 (MP)

Dear Judge Pollack:

Pursuant to your court order 77 Cr. 213, I conducted a psychiatric examination of Mr. Michael D. Knable on May 3, 1977 for the purpose of evaluating his psychiatric status with regard to his mental competency to understand the charge against him and to assist in his own defense, and his responsibility at the time of the offense with which he has been charged.

Mr. Knable was a pleasant and cooperative interview subject who was oriented to time, place, and person. He demonstrated an understanding of the legal charge against him and of the legal proceedings in which he is currently involved and was able to render an account of the events associated with the charge against him. He was able to discriminate between the content of inner mental experience and external reality and there was no evidence of hallucinatory or delusional symptomatology. His memory was intact on clinical examination and there was no evidence of an organic brain syndrome. His social judgment, as determined in the standard psychiatric interview, was adequate and appropriate. His capacity for abstract thought and conceptual mental activity was intact and there was no impairment of his capacity for logical and rational thought.

Mr. Knable is an emotionally maladjusted man who suffers from a non-psychotic characterological (personality) disorder. There were no findings by history or on clinical examination of psychological disorganization or gross impairment of reality-testing. He suffers from an impaired self-esteem and a damaged self-image with a disturbance in his sense of self in relation to others. His personality features are consistent with a paranoid character trait disorder without the presence of an organized paranoid delusional system. His behavior constituting the offense with which he has been charged represented a pathological (maladaptive) psychological defense against unacceptable feelings of inadequacy and deficiency and an acting-out of unresolved internal emotional problems relating to his self-image and self-worth. He presented a rationale for his behavior constituting the offense with which he has been charged, but such a contention raises a fact-finding and legal defense issue beyond the scope and competence of the psychiatric examination. There is a substantial clinical presumption that at the time of the offense with which he has been charged there was no impairment, as the result of mental disease or defect, of his cognitive capacity to appreciate the wrongfulness of his behavior or of his volitional capacity to conform his behavior to the requirements of law. His behavior can be interpreted psychodynamically in terms of emotional motivation, but there was no impairment of reality-testing due to mental disease or defect.

Psychiatric examination of Mr. Knable produced clinical findings which support the conclusion that he is, in terms of mental competency, capable of

Psychiatric Report

GURSTON D. GOLDIN, M. D.

166 EAST 63RD STREET

NEW YORK, N. Y. 10021

TEMPLETON 8-7223

- 2 -

understanding the charge against him and of assisting in his own defense. At the time of his behavior constituting the offense with which he has been charged, there was no impairment of his ability, as the result of mental disease or defect, to appreciate the wrongfulness of his behavior or to conform his behavior to the requirements of law.

Sincerely yours,

Gurston D. Goldin

Gurston D. Goldin, M.D.

Sentence

1 mmds 1-A

R1 2 THE CLERK: United States of America vs.
3 Michael D. Knable.

4 MR. HANDAL: Government is ready.

5 MR. KOPPELMAN: Defendant is ready.

6 THE COURT: Mr. Koppelman, is there anything
7 you want to say on behalf of Mr. Knable before I impose
8 sentence in this matter?

9 MR. KOPPELMAN: Yes, sir. May I proceed?

10 THE COURT: Please proceed.

11 MR. KOPPELMAN: Your Honor, Mr. Knable is a
12 married man. He has a wife and an infant child, who are
13 both here in court now. I understand that his wife is
14 several months pregnant.

15 Mr. Knable is an accountant and he has worked
16 virtually his entire adult life.

17 THE COURT: What is the basis for your saying
18 he is an accountant?

19 MR. KOPPELMAN: I don't mean a certified
20 public accountant; he does accounting work.

21 THE COURT: What accounting education has he
22 had?

23 MR. KOPPELMAN: He has taken at least one
24 course at New York University.

25 THE COURT: You mean he sat for some evenings

A10

Sentence

1 mmds 2

2 in a tax course? Is that the accounting education you are
3 talking about?

4 MR. KOPPELMAN: That is the only one I know
5 of, Judge. I know also he has held a number of jobs in the
6 accounting field.

7 THE COURT: That is hardly an accountant.
8 There is no reason in stultifying our intelligence by
9 referring to him as an accountant, he having sat for an
10 evening session or for some evenings in a tax course. Go
11 ahead.

12 MR. KOPPELMAN: What I mean, your Honor, is
13 that he has been doing accounting work, and whether he is
14 entitled to a title of any sort I don't know. He has been
15 a tax preparer for the last several years, and it is as a
16 result of his being engaged in that line of work that he
17 now stands before your Honor.

18 He, in his capacity as a tax preparer, both
19 prepared tax reports for clients for the Internal Revenue
20 Service and appeared before the Internal Revenue Service
21 on occasions with powers of attorney from his clients.
22 As a part of those powers of attorney, Mr. Knable misrep-
23 sented the fact that he was an attorney and a certified
24 public accountant. We make no bones about that. There
25 clearly was a misrepresentation.

All

1 mmds 3

2 However, I don't think it has ever been
3 claimed that this was done for the purpose of defrauding
4 the government of any money. I don't think it has ever
5 been claimed by anyone this was done for the purpose of
6 defrauding a client. It has never been claimed, as far
7 as I know, that Mr. Knable did or attempted to steal any
8 money from anyone in any way.

9 Certainly, the question is why, then, would
10 Mr. Knable make these representations about himself.

11 I know from the report which I have seen,
12 the probation report, it seems to me that the report indi-
13 cates that Mr. Knable did a reasonable job for his clients,
14 that he charged them reasonable fees. It seems clear to me,
15 your Honor, from what I have been able to see from reports
16 of psychologists that he stands here as a result of psycho-
17 logical and emotional problems that he has. I know there
18 are excerpts from the psychiatrist's report and the
19 psychologist's report in the probation report. I don't know
20 if your Honor has seen the entire reports.

21 Mr. Knable had been examined, I think it was,
22 in 1972 or 1973 by a Dr. Krinsky, a psychologist, who in
23 his report indicated that Mr. Knable has severe emotional
24 problems. I have the report and there are excerpts from
25 it that I would like your Honor to see.

A12

Sentence

1 mmds 4

2 THE COURT: You may read them.

3 MR. KOPPELMAN: May I approach the bench?

4 Mr. Knable's wife is in the courtroom. I have no objection
5 to it being on the record, Judge.

6 THE COURT: There is no occasion for any
7 private hearing on the question of sentence in this matter,
8 and if this is distasteful to a member of the family, that
9 can readily be corrected by that member absenting herself
10 from the courtroom.

11 I think this whole business of suppressing
12 what the facts and the truth of the matter is and the
13 reality of it is part of the difficulty that this man finds
14 himself in. He is living a great, big lie. Go ahead.

15 MR. KOPPELMAN: Judge, again, these excerpts --

16 THE COURT: Suit yourself as to what you want
17 to tell me about it. I would be glad to take into account
18 any information that you have that you want to convey to
19 me, but we will not have any private hearings on the subject.

20 MR. KOPPELMAN: This is one paragraph, and
21 this is Dr. Krinsky in 1972 or 1973, referring to Mr. Kanble:

22 "...it quickly becomes apparent that we are
23 dealing with a pathetic, even hopeless child and not a
24 mature, adequate man. His show of sophistication and
25 worldliness is a sham, a shallow cover for what seems to be

A13

Sentence

1 mmds 5

2 a regressed development and an asexual orientation. He
3 pushes in expansive fashion, seeks to intellectualize all
4 life situations but cannot escape revealing himself as
5 psychologically empty and as plagued by feelings of
6 vulnerability."

7 Another paragraph:

8 "While he tries to make it appear that he
9 is a man who takes initiative and is quite aggressive, it
10 is far more valid to assess him as passive, submissive and
11 chronically fearful. This is not the hale fellow well
12 met, the bon vivante, he strives to portray. Instead, he
13 is seen in test responses as plagued by feelings of inner
14 desolation and dread loneliness".

15 A different paragraph, Judge:

16 "He impresses as suffering an atypical schizo-
17 phrenic reaction in which undifferentiated and pseudo
18 psychopathic trends prevail. His difficulties clearly
19 transcend those seen in individuals suffering personality
20 trait disorders. This is a man whose condition will surely
21 worsen if he is not involved in a protracted therapy pro-
22 gram."

23 Dr. Krinsky saw Mr. Knable again as a result
24 of his present difficulties. He wrote a report which
25 referred to this report which I am reading from saying that

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1 mmds 6

2 his findings now are essentially the same as they were
3 at the time of this report. As I am sure your Honor knows
4 from the record here, Mr. Knable was examined very recently
5 by Dr. Gurston D. Goldin at the government's request, and,
6 again, if I may go to that report, referring to Mr. Knable,
7 this is Dr. Gurston Goldin:

8 "He suffers from an impaired self-esteem and
9 a damaged self-image with a disturbance in his sense of
10 self in relation to others. His personality features are
11 consistent with a paranoid character trait disorder without
12 the presence of an organized paranoid delusional system.
13 His behavior constituting the offense with which he has
14 been charged represented a pathological (maladaptive)
15 psychological defense against unacceptable feelings of
16 inadequacy and deficiency and an acting-out of unresolved
17 internal emotional problems relating to his self-image and
18 self-worth."

19 Dr. Goldin goes on to find, however, that
20 Knable is capable of understanding the charges and partici-
21 pating in his defense, and he also goes on to find that
22 he does not fit within the legal definition of insanity as
23 it applies in this court.

24 Judge, it seems to me that in the absense of
25 any indication, as far as I know, of any claim that this was

Sentence

1 mmds 7

2 done for fraudulent purposes, in the sense of trying to get
3 money out of people, trying to get money out of the govern-
4 ment, trying to get the government in some way, it seems
5 clear that Mr. Knable obviously has problems that in my
6 opinion, for whatever it is worth, can be resolved only by
7 psychological and psychiatric help. Psychiatrically, in
8 my opinion, Judge, this man needs help. I think this is
9 an opportunity for him to get it, and I would ask your Honor
10 to impose a sentence that would in some way help him get
11 what he really needs.

12 THE COURT: Michael Knable, is there anything
13 you want to say on your own behalf before imposition of
14 sentence?

15 THE DEFENDANT: Yes, your Honor.

16 Well, I have to agree with the findings of
17 the psychological reports and what happened. I am sorry
18 for the problem and the expense and difficulty that the
19 government has had to go through because of my actions and
20 foolishness, foolishness on my part. I meant no harm.

21 The work I did I charged for. I tried to do
22 the best work I could for my clients and for the people I
23 worked for. My knowledge of accounting was based on the
24 fact that I have been in the accounting field and have been
25 considered an accountant with major corporations in that

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Sentence

1 mmds 8

2 area for the last 18 to 20 years. I have also maintained
3 a library, and I kept current on tax laws and information.
4 There was no intent on my part to hurt or gain from my
5 actions for myself or others, or to damage anyone by my
6 actions, your Honor.

7 I apologize for any practices that I have
8 created.

9 THE COURT: What is the indebtedness which has
10 caused you to file in bankruptcy? What is the source of
11 that?

12 THE DEFENDANT: Your Honor, could I talk to
13 my attorney for a moment?

14 THE COURT: Yes.

15 (Pause)

16 THE DEFENDANT: Your Honor, the indebtedness
17 was on the basis of the fact that my wife and I married
18 and we proceeded to make purchases, and my income was going
19 on the basis of the size of my practice. And then in 1972
20 the IRS started a project on my tax returns, and at that
21 particular instance, your Honor, a number of my clients
22 became intimidated by their actions and the situation started
23 to regress, and my income was depleted to the point where
24 this year my practice was reduced by over 60 percent of what
25 it was last year, and last year it was down over 40 percent.

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Sentence

1 mmds 9

2 This was based on rumors that clients of mine
3 heard that I was being investigated or that I was in jail
4 or that I was perpetrating tax frauds or I was doing various
5 and sundry things. A number of clients called me and
6 advised me that they were being asked questions by the
7 Internal Revenue Service and asked me what to do. I told
8 the clients to answer the questions to the best of their
9 ability and in all honesty, that I had nothing to hide and
10 that I was not aware of the investigation until June or
11 July of this past year, and because of all these problems
12 and the investigation and the fact that all these mitigating
13 circumstances did occur, people started to refuse to pay me
14 fees for the taxes done because they were advised, directly
15 or indirectly, that they didn't have to pay me because of
16 the circumstances that were pending, and that put me into
17 a financial situation where I had to go into bankruptcy.

18 THE COURT: Both you and your lawyer have
19 said there was no intent or purpose to defraud either your
20 clients or the government, and yet in the list of your
21 liabilities you show that you are indebted for \$180,000 on
22 suits and judgments. Isn't the source of that charges
23 against you for fraud by your clients?

24 THE DEFENDANT: Pardon, your Honor?

25 THE COURT: What is the \$180,000 that you show

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Sentence

1 mmds 10

2 as owing on suits and judgments and garnishees on your
3 financial statement?

4 THE DEFENDANT: Those suits and judgments,
5 your Honor, are Mac Charge, American Express, the pur-
6 chase of a house as foreclosed. That is the biggest
7 part of it, was the foreclosure on a home. And other items.
8 I have no suits by clients, your Honor.

9 THE COURT: Is there anything else you want
10 to tell me?

11 THE DEFENDANT: I have no suits by the govern-
12 ment or by clients, at least, not to my knowledge. But all
13 the items that are listed in the bankruptcy, your Honor,
14 and the submission were situations that evolved from pur-
15 chases made by my wife and myself.

16 THE COURT: You consider those not fraudulent,
17 making purchases without intention to pay for them?

18 THE DEFENDANT: The intent at the time, your
19 Honor, my income was substantial enough to be able to make
20 those payments, your Honor, but then no one anticipated,
21 nor could anyone anticipate the situation that arose and
22 has arisen, or the events that took place that would cause
23 me to lose my income.

24 THE COURT: Is there anything the government
25 wants to say here in that connection?

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1 mmds 11

2 MR. HANDAL: Your Honor, we have nothing to
3 add other than what is in our presentence memorandum.

4 THE COURT: Do you have a copy of that pre-
5 sentence memorandum? I left mine upstairs.

6 MR. HANDAL: Yes, your Honor.

7 THE COURT: Well, in the government's pre-
8 sentence memorandum, Mr. Knable and Mr. Koppleman, they
9 point out that the basis of the charges against this defend-
10 ant were his fraudulent statements, that he was a lawyer
11 and a certified public accountant in powers of attorney
12 submitted to the Internal Revenue Service, and they go on
13 to say since his plea of guilty the defendant has continued
14 to prepare tax returns.

15 On June 16, 1977, the defendant appeared be-
16 fore the Internal Revenue Service representing a taxpayer
17 being audited. During a discussion with the acting tax
18 auditor supervisor the defendant was asked if he is an
19 attorney or a certified public accountant. The defendant
20 stated he was not an attorney, but was a certified public
21 accountant. At a later point in the discussion, the defend-
22 ant took from his wallet a laminated card which indicated
23 that he was a lawyer in Boston, Massachusetts. The defend-
24 ant told the supervisor that he realized he could not
25 practice in New York, since he was only admitted in

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1 mmds 12

2 Massachusetts.

3 That information, which is furnished by the
4 government, is not disputed, is it?

5 MR. KOPPLEMAN: It is, your Honor.

6 THE COURT: It is disputed? What do you say
7 is the correct version?

8 MR. KOPPELMAN: I am informed by Mr. Knable
9 that he did appear on the date and time in question.

10 THE COURT: Representing a client in a tax
11 matter?

12 MR. KOPPLEMAN: Yes, sir. There had never
13 been any indication that he could not continue practicing.
14 Obviously, he was not to continue to misrepresent. That is
15 what he tells me occurred. That is an old matter. That
16 was not a new matter. That was involving a tax matter
17 that occurred sometime in the past, that in that file there
18 was an old power of attorney that had contained the same
19 or similar misrepresentations with which he is charged.
20 That was made up many years ago, Judge. He told me that
21 during the course of this audit discussion he was dealing
22 with an auditor and an issue arose in which the supervisor,
23 a Miss Impo, I believe, had to be consulted by the auditor.

24 I am informed that there was this consulta-
25 tion, that at some point during this consultation the

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1 mmds 13

2 supervisor, Miss Lupo, took out the power of attorney from
3 the record, referred to it, and asked him, Mr. Knable,
4 if he was an attorney and a certified public accountant.
5 He advises me that during that conversation he told --
6 especially with this knowledge that he was coming up for
7 sentence -- he said, "No, I am not."

8 He tells me that during the conversation there
9 was mention of a colleague of his who is an attorney in
10 Massachusetts, and he tells me that he did not show any
11 kind of laminated card which indicates he is an attorney.
12 I have no idea what such a card might be. I never heard
13 of such a thing.

14 He tells me that there was apparently some
15 problem in communication. I don't know, of course. I was
16 not there. That is what he tells me, Judge.

17 I have spoken to Mr. Lawler, who is the
18 Assistant on this matter, who told me the version which he
19 had gotten, and I believe that even from the government's
20 point of view Mr. Knable did not walk into the Internal
21 Revenue Service and say or affirmatively represent himself
22 to be an attorney or a certified public accountant, that
23 whatever occurred occurred, and being confronted with the
24 old power of attorney, which, as I say, was made part of
25 the file several years ago.

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1 mmds 14

2 THE COURT: Michael Knable, age 38, stands
3 before the Court for sentencing, having been found on his
4 own plea of guilty to three counts of making false state-
5 ments in connection with income tax matters, and one count
6 of making false statements to the Internal Revenue Depart-
7 ment.

8 The government record indicates that on
9 numerous occasions during the years 1973, 1975 and 1976
10 the defendant represented himself as a certified public
11 accountant and as an attorney to clients for whom he was
12 preparing income tax returns. He obtained powers of attorney
13 on this basis and used those powers of attorney in connec-
14 tion with his alleged representation of those taxpayers at
15 the Internal Revenue Service.

R2 16 His record indicates that he has been arrested
17 on three prior occasions for misrepresenting himself, and
18 that in 1972, on October 23, he was charged with the unlaw-
19 ful practice of law in Nassau County and pleaded guilty
20 to the attempt to practice law without a license and was
21 fined and placed on probation.

22 Between July 27, 1970 and September 22, 1970
23 in the Long Beach City Court he practiced law, although
24 not accredited to do so.

25 On May 15, 1973, he was charged with repre-

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1 mmds 15

2 sending himself as an attorney and was conditionally dis-
3 charged in the Manhattan Criminal Court. In that connection
4 he had apparently charged a female \$350 to represent her
5 in a divorce suit.

6 In 1975 he impersonated a police officer and
7 he was conditionally discharged and fined \$50. He has
8 represented himself also as a member of the Manhattan
9 District Attorney's office. His record is one of having
10 falsified his position in society, including the operation
11 of an alleged tax corporation known as Aerospace Tax
12 Corporation since 1971, from which he earned substantial
13 sums, apparently.

14 The offenses which the government has listed
15 in a 16-count indictment indicate other charges, although
16 he pleaded guilty to only Counts 1, 2, 3 and 6.

17 MR. KOPPELMAN: Judge, if I may, excuse me
18 for interrupting, they are all the same in substance.

19 THE COURT: It means there were sixteen
20 different occasions when there was this fraudulent conduct,
21 all of the same character. His exculpatory efforts at
22 this time don't sit very well. This is the type of white
23 collar crime which indicates an amoral sense and which
24 leaves other members of the community to wonder what you
25 can do and get away with.

1 mmds 16

2 It is the judgment of the Court that the
3 defendant be committed to the custody of the Attorney
4 General for imprisonment for a term of two years on each
5 of Counts 1, 2, 3 and 6, to run concurrently.

6 Application may be made in connection with the
7 remaining open counts.

8 MR. KOPPELMAN: I move to dismiss them at this
9 time.

10 THE COURT: Any objection?

11 MR. HANDAL: No.

12 THE COURT: The remaining counts are dismissed.

13 MR. KOPPELMAN: May I ask you to reconsider?

14 THE COURT: I have given this case a great
15 deal of consideration. It is a very troublesome case.
16 It is the kind of case where a modicum of misguided intel-
17 ligence has led this man into the belief that he can do
18 and say anything, provided he does not use weapons, and get
19 away with it. I don't think society can tolerate that kind
20 of conduct. I think he is being treated excessively
21 leniently, considering the enormity of his transgressions.

22 MR. KOPPELMAN: Judge, if I may say, there
23 has never been a claim that he has stolen money.

24 THE COURT: Do not stand there and moralize
25 about what his conduct was. What do you expect? A man who

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1 mmds 17

2 goes about doing this kind of thing is worse than a man who
3 confronts you physically, because you have no notice that
4 this kind of conduct is going on. At least, when one con-
5 fronts you physically with a weapon, you can see what is
6 happening.

7 MR. KOPPELMAN: Your Honor --

8 THE COURT: The defendant is remanded.

9 MR. KOPPELMAN: May I just say, the report
10 indicates the work he did was good, he didn't do people out
11 of money, he charged reasonable rates.

12 THE COURT: His conduct is not what society
13 expects or will tolerate. The defendant is remanded.

14 MR. KOPPELMAN: Judge, would your Honor con-
15 sider continuing him on bail pending appeal?

16 THE COURT: No, I will not. He is remanded.

17 MR. KOPPELMAN: May we have just a brief stay
18 so that he can get his wife home?

19 THE COURT: I beg your pardon. I said the
20 defendant is remanded. The matter is terminated.

21 Now, go ahead, marshal.

22 It is time that he began to face up to his
23 responsibilities. I am sorry for his family and the rest,
24 but he can't get away with this.

25
* * * *

A26

Judgment

United States District Court for

THE SOUTHERN DISTRICT OF NEW YORK

United States of America vs.

DEFENDANT

MICHAEL D. KNABLE

DOCKET NO.

77 CR. 213 MP

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR

July 18, 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Robert Koppelman

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that ☐ NOLO CONTENDERE, ☐ NOT GUILTY,
there is a factual basis for the plea, as to counts 1,2,3 and 6 only.

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☐ GUILTY.FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully & knowingly did aid & assist in, & procure counsel & advise the preparation & presentation under & in connection with a matter arising under the internal revenue laws, powers of attorney in connection with the individual tax audit changes for certain taxpayers which powers of attorneys were fraudulent & false as to certain material matters, knowing the same to be fraudulent & false.(T.26,U.S.C.,Section 7206(2).) & unlawfully, wilfully and knowingly did make & cause to be made in a matter within the jurisdiction of the Internal Revenue Service, false, fictitious & fraudulent statements & representations in powers of attorney submitted on behalf of individual taxpayers knowing the same to be false & fraudulent.(T.18,U.S.C. Section 1001.)

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **TWO(2)YEARS** on each of counts 1,2,3 and 6 to run concurrently with each other.

SENTENCE
OR
PROBATION
ORDER

Counts 4,5 and 7 to 16 inclusive are dismissed on motion of defendant's counsel with consent of the Government.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT
COMME-
NATION

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge☐ U.S. Magistrate

MILTON POLLACK

Date July 18, 1977

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Notice of Appeal

UNITED STATES DISTRICT COURT

112 Broadway
New York, N.Y. 10006
UNITED STATES OF AMERICA

Docket Number

77 Cr. 213

Michael D. KNABLE

Defendant

HON. MILTON POLLACK
(District Court Judge)

NOTICE OF APPEAL

Notice is hereby given that

Michael D. KNABLE

appeals to

the United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ Order ☐ other
(specify) _____ entered in this action on

JULY 18, 1977

(Date)

Date
To:

DEFENDANT AT MCC

Address

ROBERT KOPPELMAN
(Counsel for Appellant)

115 BROADWAY
NEW YORK N.Y. 10006

Phone Number

347-7980

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

QUESTIONNAIRE

I am ordering a transcript
I am not ordering a transcript

Reason:

- ☐ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

TRANSCRIPT ORDER

Prepare transcript of

- ☐ Pre-trial proceedings
☐ Trial
☒ Sentence
☐ Post-trial proceedings

DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE).

ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of transcript. (FRAP 10(b)) Method of payment ☐ Funds ☐ CJA Form 21

ATTORNEY'S signature

Robert Koppelman

DATE

7/19/77

COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and
forwarded to Court of Appeals.

Order received

Estimated completion date

Estimated number
of pages.

Date

Signature

(Court Reporter)

COPY FOR DEFENDANT

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COPY RECEIVED
SEP 1 - 1977
U. S. ATTORNEY
SO. DIST. OF N. Y.

ROBERT B. FISKE JR.

